

**CASE LAW ADDRESSING ETHICS COMMISSIONS,
SEPARATION OF POWERS, AND THE LEGISLATURE'S AUTHORITY TO JUDGE THE
ELECTION AND QUALIFICATIONS OF ITS MEMBERS
AND TO PUNISH ITS OWN MEMBERS**

Under separation of powers, there is little case law directly on point that specifically addresses whether or not an independent ethics commission would violate a state's constitutional provision which authorizes the legislature: 1) to judge the election and qualifications of its members; and 2) to punish its own members.

Although not all of the cases summarized in the attached table are directly on point, the cases include separation of powers issues that are either part of the holding, or are part of the court's analysis. The cases summarized below more directly address whether or not the legislature would violate separation of powers by delegating to an ethics commission jurisdiction over legislators.

FLORIDA- *Florida Commission on Ethics v. Plante*, 369 So. 2d 332, 337 (Fla. 1979).

- The Commission found probable cause to believe that five senators failed to file full and public disclosure of their financial interests.
- The senators argued that by issuing a public report, the Commission would violate the constitutional prerogative of the legislature to discipline its own members.
- In construing the meaning of "public report," the court determined that a report does not commence official action for discipline, penalize, affect qualifications, punish, or unseat an officeholder.
- Power of enforcement is specifically left to the governor, legislature, attorney general, and other public officers.
- The commission administers no program; it enforces no law. Thus, the commission would not infringe upon the legislature's power to discipline its own members.

LOUISIANA - *In re Arnold*, 991 So. 2d 531 (La.App. 1 Cir. 2008).

- The Board of Ethics charged two state legislators for participating in the discussion and vote on several bills "concerning consolidation of the Assessor's Office in Orleans Parish," thus violating Louisiana's ethics law.
- The Board stated that the violation occurred because the legislators had knowledge that members of their immediate families had a substantial economic interest in the legislation.
- The legislators claimed legislative immunity, and that the Board could not investigate, prosecute, adjudicate or penalize them for actions within the sphere of legislative activity.
- The court held that under legislative immunity, only the appropriate house could question or penalize the legislators for any actions taken within the sphere of legitimate legislative activity.
- The court determined that the Board did not waive such immunity when it enacted the Code of Ethics and made the Code apply to members of the legislature.
- Legislators are still subject to the ethics code, but violation of those duties occurring within the "legitimate legislative sphere" places them within the sole province of the legislature for questioning.

NEVADA - *Hardy v. Nevada Commission on Ethics*, No. 53064 (Nev. May 21, 2009)(*Order of Affirmance - published opinion pending*).

- The Commission instituted administrative proceedings against a senator alleging that he failed to disclose a conflict of interest with respect to a bill, and then voted on the bill.
- The Nevada Supreme Court held that the discipline of legislators is constitutionally committed to the legislature. The court, however, has not addressed what legislative actions are subject to discipline for disorderly conduct under the Nevada Constitution.
- That power cannot be delegated when the conduct at issue involves a core function such as voting, and by extension, disclosure of conflicts of interest prior to voting.
- The Commission is an agency of the executive branch. It was created to execute the ethics laws, and

empowered to impose civil penalties.

- The legislature cannot waive constitutionally based structural protections such as the separation of powers doctrine. Voting, and by extension, disclosure of conflicts of interests is constitutionally committed to the Senate and cannot be delegated to the Commission.
- The legislature cannot, by enacting a statute that delegates certain powers to another branch of government, waive any separation of powers violation inherent in such a delegation, through the simple act of enacting a statute.
- Legislators would still be subject to ethics laws for conduct that falls outside the sphere of legitimate legislative activity.

NEW JERSEY - *Joint Legislative Committee on Ethical Standards v. Perkins*, 432 A.2d 116 (N.J. 1981).

- The Committee which was authorized to enforce the state's conflicts-of-interest law sued a state legislator to collect a fine for violation of the law.
- The legislator argued that the legislature's delegation of enforcement power to the Committee violated the legislature's constitutional authority to punish its own members.
- The court determined that the state conflicts-of-interest law, a general legislative enactment, was applicable to all state officers, including legislators.
- The court likened the conflicts-of-interest law to criminal law, in that any person, including a legislator, is subject to the law.
- The delegation of enforcement power was constitutional because the Committee would recommend to the appropriate house of the legislature further action against a legislator who violated the law.

MASSACHUSETTS - *Opinion of Justices to Senate*, 376 N.E.2d 810 (Mass. 1978).

- The Senate requested an opinion regarding the constitutionality of an initiative petition proposing a comprehensive ethics law governing *public officers*.
- The proposed law would require certain state and county public officials and employees, as well as candidates for elective and certain appointive state and county offices, to publicly disclose their financial interests each year.
- One section would prohibit a public official from taking the oath of office or performing any of his duties unless he had filed a financial interest statement.
- The court determined that this section, as applied to state senators and representatives, would violate the constitutional right of the Senate and the House of Representatives to judge the elections, returns and qualifications of their members.

RHODE ISLAND-- *Irons v. Rhode Island Ethics Commission*, 2008 R.I. Super. LEXIS 137 (R.I. Super. 2008).

- The Commission's investigation revealed probable cause to believe that Irons, a senator who had resigned, had used his office for financial gain and voted on legislation in which he had a substantial conflict of interest.
- The Commission had constitutional authority to prosecute legislators and required that all elected officials, including the General Assembly, be subject to the ethics code.
- Irons claimed that the Speech or Debate Clause barred his questioning or prosecution for any alleged offense that was based on his legislative duties.
- The court found that the ethics code and the Speech or Debate Clause coexisted so that both were operative.
- The Speech or Debate Clause provided legislators with express immunity for acts that fell within the parameters of their legislative positions.
- However, the Commission could investigate alleged illegal activities that did not pertain to legislative functions.